

1 Sara F. Khosroabadi, Esq. (SBN: 299642)
 2 sara@westcoastlitigation.com
 3 Joshua B. Swigart, Esq. (SBN: 225557)
 4 josh@westcoastlitigation.com
5 Hyde & Swigart
 6 2221 Camino Del Rio South, Suite 101
 7 San Diego, CA 92108
 8 Telephone: (619) 233-7770
 9 Facsimile: (619) 297-1022

10 Abbas Kazerounian, Esq. (SBN: 249203)
 11 ak@kazg.com
12 Kazerouni Law Group, APC
 13 245 Fischer Avenue, Unit D1
 14 Costa Mesa, CA 92626
 15 Telephone: (800) 400-6808
 16 Facsimile: (800) 520-5523

17 *17 Attorneys for, Derrick P. Chung*
 18 *18 individually and for all others similarly situated*

19
20 UNITED STATES DISTRICT COURT
21 SOUTHERN DISTRICT OF CALIFORNIA

22 JEAN S. CHUNG
 23 individually and all for
 24 others similarly situated,

25 Plaintiff,

26 v.

27 COMENITY CAPITAL
 28 BANK & PAYPAL, INC.

29 Defendants.

30 Civil Action No: '16CV2401 GPC KSC

31 **CLASS ACTION COMPLAINT**

32 **COMPLAINT FOR DAMAGES**
PURSUANT TO THE FAIR
CREDIT REPORTING ACT, 15
U.S.C. § 1681, ET SEQ.

33 **JURY TRIAL DEMANDED**

INTRODUCTION

1. The United States Congress has found abundant evidence that the banking
2. system is dependent upon fair and accurate credit reporting. Inaccurate credit
3. reports directly impair the efficiency of the banking system, and unfair credit
4. reporting methods undermine the public confidence which is essential to the
5. continued functioning of the banking system. An elaborate mechanism has
6. been developed for investigating and evaluating the credit worthiness, credit
7. standing, credit capacity, character, and general reputation of consumers.
8. Consumer reporting agencies have assumed a vital role in assembling and
9. evaluating consumer credit and other information on consumers. There is a
10. need to insure that consumer reporting agencies exercise their grave
11. responsibilities with fairness, impartiality, and a respect for the consumer's
12. right to privacy. Congress wrote the Fair Credit Reporting Act ("FCRA"), 15
13. U.S.C. § 1681 et seq., to require that consumer reporting agencies adopt
14. reasonable procedures for meeting the needs of commerce for consumer
15. credit, personnel, insurance, and other information in a manner which is fair
16. and equitable to the consumer, with regard to the confidentiality, accuracy,
17. relevancy, and proper utilization of such information.
18. 2. JEAN S. CHUNG ("Plaintiff"), by Plaintiff's attorneys, brings this complaint
19. to challenge the actions of Defendant COMENITY CAPITAL BANK,
20. PAYPAL, INC. ("Defendant") with regard to Defendant's unauthorized and
21. unlawful credit inquiry.
22. 3. Plaintiff makes these allegations on information and belief, with the exception
23. of those allegations that pertain to Plaintiff, or to Plaintiff's counsel, which
24. Plaintiff alleges on personal knowledge.
25. 4. While many violations are described below with specificity, this Complaint
26. alleges violations of the statute cited in its entirety.



5. Unless otherwise stated, all the conduct engaged in by Defendant took place in California.
6. Any violation by Defendant was knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violation.
7. Unless otherwise indicated, the use of Defendant's name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of Defendant's named.

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction because this case arises out of violation of federal law. 15 U.S.C. §1681 *et seq.*
9. This action arises out of Defendant’s violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 – 1681x (“FCRA”).
10. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(b) because Defendant’s contacts with this District are sufficient to subject it to personal jurisdiction, and, a substantial party of the events giving rise to the claims occurred in this District.

PARTIES

11. Plaintiff is a natural person who resides in the County of San Diego, in the State of California whose credit report was affected by an unauthorized inquiry. In addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1681a(c).
12. Plaintiff is informed and believes, and thereon alleges, that PayPal Credit is subject to credit approval and offered by Comenity Capital Bank.

13. Plaintiff is informed and believes, and thereon alleges, that Defendant
 2 acquired Plaintiff's credit information through an unauthorized inquiry of
 3 Plaintiff's "consumer report" as that term is defined by 15 U.S.C. 1681a(d)
 4 (1).

5 **STATUTORY BACKGROUND**

6 14. The FCRA is a consumer protection statute which regulates the activities of
 7 credit reporting agencies and users of credit reports, and which provides
 8 certain rights to consumers affected by use of the collected information about
 9 them.

10 15. Congress designed the FCRA to preserve the consumer's right to privacy by
 11 safeguarding the confidentiality of the information maintained by the
 12 consumer reporting agencies. Congress stated in the opening section of the
 13 FCRA that "[t]here is a need to insure that consumer reporting agencies
 14 exercise their grave responsibilities with fairness, impartiality, and a respect
 15 for the consumer's right to privacy." 15 U.S.C. § 1681a(4).

16 16. Under the FCRA, the term "consumer report" means any written, oral or other
 17 communication of any information by a consumer reporting agency hearing
 18 on a consumer's creditworthiness, credit standing, credit capacity, character,
 19 general reputation, personal characteristics, or mode of living which is used or
 20 expected to be used or collected in whole or in part for the purpose of serving
 21 as a factor in the underwriting of credit transactions involving the consumer.

22 17. Congress has chosen to protect the consumer's right to privacy by prohibiting
 23 any release of consumer reports unless the release is for one of the
 24 permissible purposes listed in 15 U.S.C. § 1681b.

25 18. 15 U.S.C. § 1681b(f) in turn provides "[a] person shall not use or obtain a
 26 consumer report for any purpose unless — (1) the consumer report is obtained
 27 for a purpose for which the consumer report is authorized to be furnished
 28 under this section."



1 19. The permissible purposes listed in 1681b usually arise only in connection
 2 with transactions initiated by the consumer. *See* 15 U.S.C. § 1681b(a)(3)(A)-
 3 (F).

4 **FACTUAL ALLEGATIONS**

5 20. At all times relevant, Plaintiff is and was an individual residing within the
 6 State of California.

7 21. Plaintiff is informed and believes, and thereon alleges, that at all times
 8 relevant, Defendant conducted business in the State of California.

9 22. Plaintiff is informed and believes, and thereon alleges, that Defendant is a
 10 “person” as the term is defined by 15 U.S.C. § 1681a(b).

11 23. Plaintiff does not have a pre-existing business relationship with Defendant.

12 24. Plaintiff does not have any information or knowledge as to what account
 13 Defendant was serving or collection on behalf of, the identity of the owner of
 14 the alleged debt, nor the identity of the original creditor of the alleged debt.

15 25. On July 7, 2016, upon review of her Equifax credit report Plaintiff discovered
 16 that on or about January 11, 2016, Defendant submitted an unauthorized
 17 credit report inquiry to Equifax, a credit reporting agency.

18 26. On January 11, 2016, Plaintiff did not have any account relationship with
 19 Defendant.

20 27. Plaintiff never conducted any business nor incurred any additional financial
 21 obligations to Defendant.

22 28. 15 U.S.C. § 1681b delineates the only permissible uses of, or access to,
 23 consumer reports, including “to use the information in connection with a
 24 credit transaction involving the consumer on whom the information is to be
 25 furnished and involving the extension of credit to, or review or collection of
 26 an account of, the consumer.” 15 U.S.C. § 1681b(a)(3)(A).



1 29. Defendant's inquiry for Plaintiff's consumer report information, without
2 Plaintiff's consent, falls outside the scope of any permissible use or access
3 included in 15 U.S.C. § 1681b.

4 30. Therefore, Defendant violated 15 U.S.C. § 1681b by using Plaintiff's
5 consumer report for an impermissible use that falls outside the scope of 15
6 U.S.C. § 1681b.

7 31. Defendant's actions were willful under 15 U.S.C. §§ 1681n because
8 Defendant was aware of the FCRA's prohibitions on impermissibly pulling
9 consumers' credit reports. See *Doe v. Sentech Employment Services, Inc.*,
10 E.D. Mich. May 16, 2016) (citing *Singleton v. Domino's Pizza, LLC*, 2012
11 WL 245965, *4 (D. Md. Jan. 25, 2012) ("[A]ssertions that a defendant is
12 aware of the FCRA, but failed to comply with its requirements, are sufficient
13 to support an allegation of willfulness and to avoid dismissal.").

14 32. Plaintiff suffered an invasion of a legally protected interest when Defendant
15 accessed her highly confidential personal information on her credit report at a
16 time when Defendant had no right to do so, an invasion of Plaintiff's right to
17 privacy. The FCRA, through 15 U.S.C. § 1681b, protects consumers like
18 Plaintiff from this precise behavior.

19 33. Plaintiff has a common law right to keep her personal credit information
20 private. E.g., Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*,
21 4 Harv. L. Rev. 1155, 193 (1890). Congress sought to further protect that
22 right by enacting the FCRA. Indeed, the common law tort of intrusion upon
23 seclusion is preempted by the FCRA, and the FCRA expressly provides that
24 Congress made the following finding: "There is a need to insure that
25 consumer reporting agencies exercise their grave responsibilities with
26 fairness, impartiality and a respect for the consumer's right to privacy." 15
27 U.S.C. §1681a(4) (emphasis added).

28



1 34. Plaintiff was affected personally because when she realized the behavior of
2 Defendant described above (pulling her credit report without any
3 authorization), Plaintiff felt that her privacy had been invaded and that her
4 personal and private information had been disclosed to Defendant, who had
5 no right to Plaintiff's private information. Defendant's behavior caused
6 Plaintiff to suffer mental and emotional distress as a result of Defendant's
7 invasion of Plaintiff's privacy.

8 35. The injury suffered by Plaintiff is concrete because Defendant's violation of
9 15 U.S.C. § 1681b caused Plaintiff's credit score to drop directly impacting
10 Plaintiff's credit availability and finances. Plaintiff also suffered from
11 Defendant's invasion of Plaintiff's privacy. In enacting 15 U.S.C. § 1681b,
12 Congress specifically sought to protect consumers from invasions of privacy
13 and created restrictions on access to consumers' sensitive financial
14 information in their credit reports.

15 36. Further, Defendant increased the risk that Plaintiff and the class members will
16 be injured if there is a data breach on Defendant's computer systems by
17 acquiring additional highly sensitive information about Plaintiff and the class
18 members and saving that information onto its computer system. Data
19 breaches are increasingly common (see, e.g., Data Breaches, Kerbs, available
20 at <http://krebsonsecurity.com/category/data-breaches/>), and financial
21 institutions like Defendant are frequent targets of cybercriminals (see, e.g.,
22 The Top 8 Largest Data Breaches in the Financial Services Industry,
23 Association of Certified Financial Crime Specialists, available at <http://www.acfcs.org/the-top-8-largest-data-breaches-in-the-financial-services-industry/>).

24 37. As such, Plaintiff is entitled to the remedies available under 15 U.S.C. § 1681n
25 and 15 U.S.C. § 1681o.

26
27
28

CLASS ACTION ALLEGATIONS

38. Plaintiff brings this action on behalf of herself and on behalf of all others similarly situated.
39. The proposed classes that Plaintiff seeks to represent are defined as follows:

All persons whose consumer credit report from any of the three major credit reporting agencies (TransUnion, Equifax, and Experian) reflects an unauthorized consumer credit report inquiry by Defendant within the past 2 years (“Class One”).

All persons whose consumer credit report from any of the three major credit reporting agencies (TransUnion, Equifax, and Experian) reflects an unauthorized consumer credit report inquiry by Defendant within the past 5 years (“Class Two”).

40. Defendant and its employees or agents are excluded from the Classes. Plaintiff does not know the number of members in the Classes, but believes the Classes' members number in the hundreds, if not more. This matter should therefore be certified as a Class action to assist in the expeditious litigation of this matter.
41. Plaintiff and members of the Classes were harmed by the acts of Defendant in at least the following ways: Defendant, either directly or through its agents, engaged in illegal and deceptive practices, when it submitted an unauthorized consumer report inquiry under 15 U.S.C. § 1681 et seq. Plaintiff and the Classes' members were damaged thereby.
42. This suit seeks only recovery of actual and statutory damages on behalf of the Classes, and it expressly is not intended to request any recovery for personal injury and claims related thereto. Plaintiff reserves the right to expand the Classes' definitions to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.
43. The joinder of the Classes' members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties

1 and to the court. The Classes can be identified through Defendant's records or
 2 Defendant's agents' records.

3 44. There is a well-defined community of interest in the questions of law and fact
 4 involved affecting the parties to be represented. The questions of law and fact
 5 to the Classes predominate over questions which may affect individual
 6 members of the Classes, including the following:

7 a. Whether, within the class period, Defendant or its agents submitted any
 8 consumer credit report inquiries; and
 9 b. Whether Plaintiff and the members of the Classes were damaged thereby,
 10 and the extent of damages for such violations.

11 45. As a person who suffered an unauthorized consumer credit report inquiry by
 12 Defendant on her credit report, Plaintiff is asserting claims that are typical of
 13 the Class. Plaintiff will fairly and adequately represent and protect the interest
 14 of the Class in that Plaintiff has no interests antagonistic to any member of the
 15 Class.

16 46. Plaintiff and the members of the Class have all suffered irreparable harm as a
 17 result of the Defendant's unlawful and wrongful conduct. Absent a class
 18 action, the Classes will continue to face the potential for irreparable harm. In
 19 addition, these violations of law will be allowed to proceed without remedy
 20 and Defendant will likely continue such illegal conduct. Because of the size
 21 of the individual claims, few, if any, members of the Classes could afford to
 22 seek legal redress for the wrongs complained of herein.

23 47. Plaintiff has retained counsel experienced in handling class action claims and
 24 claims involving violations of the Fair Credit Reporting Act.

25 48. A class action is a superior method for the fair and efficient adjudication of
 26 this controversy. Class-wide damages are essential to induce Defendant to
 27 comply with federal law. The interest of the members of the Classes in
 28 individually controlling the prosecution of separate claims against Defendant

1 is small because the maximum statutory damages in an individual action for
 2 FCRA violations are minimal. Management of these claims is likely to
 3 present significantly fewer difficulties than those presented in many class
 4 claims.

5 49. Defendant has acted on grounds generally applicable to the Class, thereby
 6 making appropriate declaratory relief with respect to the Class as a whole.

7 **FIRST CAUSE OF ACTION**
 8 **THE FAIR CREDIT REPORTING ACT**
 9 **15 U.S.C. §§ 1681-1692x (FCRA)**

10 50. Plaintiff incorporates by reference all of the above paragraphs of this
 Complaint as though fully stated herein.

11 51. The foregoing acts and omissions constitute numerous and multiple violations
 of the FCRA.

12 52. As a result of each and every negligent violation of the FCRA, Plaintiff is
 entitled to actual damages, pursuant to 15 U.S.C. § 1681o(a)(1); and
 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681o(a)(2),
 from Defendant.

13 53. As a result of each and every willful violation of the FCRA, Plaintiff is
 entitled to actual damages or damages of not less than \$100 and not more than
 \$1,000 and such amount as the court may allow for all other class members,
 pursuant to 15 U.S.C. § 1681n(a)(1)(A); punitive damages as the court may
 allow, pursuant to 15 U.S.C. § 1681n(a)(2); and reasonable attorney's fees and
 costs pursuant to 15 U.S.C. § 1681n(a)(3) from Defendant.

14 **PRAYER FOR RELIEF**

15 Plaintiff respectfully requests the Court grant Plaintiff and the members of
 16 the Classes the following relief against Defendant:

17 • An order certifying the Class and appointing Plaintiff as Representative
 18 of the Classes;

- An order certifying the undersigned counsel as Class Counsel;
- A declaratory judgment that Defendant's actions as discussed herein is unlawful and an invasion of privacy;
- An order requiring Defendant, at its own cost, to notify all members of the Classes of the unlawful acts discussed herein;
- Injunctive relief stopping Defendant from further impermissible pulls;
- Actual damages suffered by Plaintiff and each Class member, pursuant to 15 U.S.C. § 1681o(a)(1), against Defendant;
- Statutory damages of not less than \$100 and not more than \$1,000 to Plaintiff and each Class member, pursuant to 15 U.S.C. § 1681n(a)(1), against Defendant;
- An award of any such amount as the court may allow for all other class members, against Defendant;
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. §§ 1681n(a)(3) and 1681o(a)(2), against Defendant; and
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

54. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury

Respectfully submitted,

Hyde & Swigart

Date: September 22, 2016

By: s/ Sara Khosroabadi
Sara Khosroabadi
Attorneys for Plaintiff